

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

ENCINITAS UNION SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N2006090663

**ORDER DENYING MOTION FOR  
STAY PUT**

On September 26, 2006, the Office of Administrative Hearings (OAH) received a motion for stay put from attorneys Timothy Adams and Hans Gillinger, on behalf of Petitioner Student (Petitioner). Petitioner recently turned three years old and is eligible to receive special education services from Respondent Encinitas Union School District (District), pursuant to Part B of the Individuals with Disabilities in Education Act (IDEA). Petitioner seeks stay put placement pursuant to his last agreed-upon and implemented Individualized Family Service Plan (IFSP).

On October 5, 2006, OAH received an opposition to the stay put motion from attorney Anahid Hoonanian, on behalf of the District. On October 6, 2006, OAH received Petitioner's reply to the District's opposition. On October 10, 2006, OAH received the District's response to Petitioner's reply.

APPLICABLE LAW

Under federal and State special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Cal. Ed. Code §§ 56505, subd. (d), 48915.5.) This pendency placement is commonly referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP) which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Ed.* (6th Cir. 1990) 918 F.2d 618, 625.) California law states that IEP means an IFSP when the educational

program pertains to an individual with exceptional needs who is under age three. (Ed. Code § 56032.)

The new federal regulations to the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA), which were issued on August 14, 2006, and became effective on October 13, 2006, provide the following:

If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child has been receiving.

(34 C.F.R. § 300.518(c).)

The comments to section 300.518 state the following:

We believe that a child who previously received services under Part C of the Act, but has turned three and is no longer eligible under Part C of the Act, and is applying for initial services under Part B of the Act, does not have a “current educational placement.”

We are adding language to clarify that if the complaint involves an application for initial services under Part B of the Act from a child who has turned three and is no longer eligible under Part C of the Act, the public agency is not required to continue providing the early intervention services on the child’s IFSP.

(Federal Register, Vol. 71, No. 156, p. 46709.)

## DISCUSSION

Previously in California, when an eligible student transitioned from Part C to Part B of the Individuals with Disabilities in Education Act (IDEA), and the student never had an agreed-upon and implemented IEP, the educational services in a student’s IFSP operated as the stay-put placement. (See, e.g., *Student v. Los Angeles Unif. Sch. Dist.*, SN03-01391, 40 IDELR 201, 4 ECLPR 516 (August 19, 2003); *Student v. San Gabriel Unif. Sch. Dist.*, SN00-00648, 32 IDELR 248 (May 2, 2000).)

However, the new federal regulations to the IDEIA are now in effect. As stated above, the federal regulations specify that, when a student turns three and becomes eligible under Part B, the student does not have a current educational placement, and the public agency is not required to provide the services under the IFSP as stay put. Hence, in the

present case, Petitioner is not entitled to receive the program under his IFSP as his stay put placement.

ORDER

Petitioner's motion for stay put is denied.

Dated: October 16, 2006

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SUZANNE B. BROWN  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings